

Internal Revenue Service
District Director

Department of the Treasury

Post Office Box 1680, GPO
Brooklyn, NY 11202

Date: APR 05 1990

Person to Contact:

[REDACTED]

Telephone Number:

[REDACTED]

Refer Reply to:

[REDACTED]

Form: 1041

CERTIFIED MAIL

Gentlemen:

This is a Final Adverse Determination as to your exempt status under Section 501(c)(6) of the Internal Revenue Code.

Our adverse determination was made for the following reason(s):

[REDACTED]'s activities consist of providing particular services to individual persons, such services being readily available to the public for a fee. The services are provided as an economy of scale and are not mandated by law with respect to accepting an undesirable risk or situation as a condition precedent to doing business in the jurisdiction. The applicant is engaged in a commercial activity for a fee on behalf of its members.

This final adverse determination is based on a request for technical advice, accordingly no further administrative appeal is available on the issue of your exempt status. In your conference with the National Office you agreed that you are not described in Section 501(c)(6) of the Code prior to May 29, 1987, the date on which your revised by-laws became effective.

You are required to file Federal income tax returns on Form 1041 with the appropriate service center.

Sincerely yours,

[REDACTED]

District Director

cc: [REDACTED]

Date NOV 30 1988

Person to Contact:

Telephone Number:

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption under Section 501(c)(6) of the Internal Revenue Code.

██ (the "Association") is organized under Sections ██████████ of Chapter ██████████ of the General Laws of the ██████████ for the purpose of providing retirement benefits for the cooperative banking industry in ██████████. The Association provides a medium through which funds may be collected, invested, accumulated, and paid out to provide pension and other benefits for eligible employees of the cooperative banking industry. By providing a mechanism for cooperative banks to offer retirement benefits which are comparable to those offered by employers in other industries, careers in cooperative banking are more attractive and the cooperative banking industry is better able to attract and keep employees.

The Association was organized ██████████ by the adoption of by-laws in accordance with the statute to administer a pension program for the cooperative banking industry. Organizations in the cooperative bank industry may join the Association and become "Participating Banks" by adopting the by-laws of the Association. Until ██████████ the benefit provisions of this pension program were contained in the by-laws of the Association. As of that date, the by-laws of the Association were amended to remove the benefit provisions and a separate "Retirement Program" was adopted which amended and restated the pension program to comply with the Employee Retirement Income Security Act of 1974. The Retirement Program was again amended and restated as of ██████████ to comply with the applicable requirements of the Tax Equity and Fiscal Responsibility Act of 1982, the Tax Reform Act of 1984, and the Retirement Equity Act of 1984.

The Retirement Program consists of three separate plans: Plan A, the Future Service Plan; Plan B, the Past Service Plan; and Plan C, the Supplemental Plan. Each plan has a trust fund to which contributions are made and from which benefits are paid. Plan A is a defined contribution plan under which an employee contributes between 1% and 10% of his salary to his individual account in Trust Fund A. His employer makes a

contributions which matches, doubles, or triples the employee's contribution, within certain limits. Employer contributions are made to a future service account in Trust Fund A. Each employee's benefits are determined by the balance in his individual account and future service account and the terms of the Retirement Program. Plan B and Plan C are both defined benefit plans. Benefits under Plan B and Plan C are defined by the terms of the Retirement Program and separate accounts are not maintained for each employee. Contributions are made by employers to Trust Fund B and Trust Fund C, respectively, as required under accepted actuarial principles to provide promised benefits under plans and to maintain the plans in an actuarially sound condition. Contributions under Plan B and Plan C by employees are neither required nor permitted. Benefits under all three plans are paid from the respective trust fund for each plan and not from the Association. The Association has entered into a trust agreement for each trust fund under which a trustee accepts, holds, and invests contributions and pays benefits to employees.

On [REDACTED], the Board of Trustees of the Association authorized the allocation of certain administrative expenses to be charged to the pension plans. Other operating expenses were reimbursed by the Participating Banks. This payment plan was amended effective [REDACTED], at which time the Association's board approved all expenses to be reimbursed through the three pension plans. Beginning in [REDACTED], financial support for the Association is primarily received in the form of annual assessments charged to the Participating Banks to cover the cost of operating the Association. The assessments are made based on a flat rate charged to each Participating Bank, plus an amount weighted to reflect the number of employees of each bank who are participants under the Retirement Program. The Association does not assess the individual bank employees.

Section 501(a) provides, in part, for the exemption from Federal income tax of organizations described in section 501(c). Section 501(c)(6) describes business leagues, chambers of commerce, real estate boards, boards of trade and similar organizations not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation 1.501(c)(6)-1 provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. The activities of the organization must be directed to the improvement of business conditions of one or more lines of business, and not the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only enough income to be self-sustaining, is not a business league.

Rev. Pul. 65-164, 1965-1 CB 238 (considered in *** GCM' 30644, A-612223 (April 29, 1958)), held that a nonprofit association of employers in a particular industry whose activities consisted of the negotiation of written collective bargaining labor contracts, the interpretation of such contracts, and the adjustment of labor disputes, qualified for exemption under section 501(c)(6). It was noted that these activities "further the common purpose with respect to the common labor problems of the business group and do not represent services to individual members which they could purchase elsewhere." It was specifically noted in Rev. Pul. 65-164 that the functions of a labor or personnel department would not be activities consistent with exemption for an association under section 501(c)(6) because it would be permitting benefits to inure to the membership.

Rev. Pul. 66-151, 1966-1 CB 152, concerned a business league exempt under section 501(c)(6) whose principal activity was to represent member firms in all matters pertaining to their relationship with labor unions. The organization also regularly managed a health and welfare plan for its members. It received a fee for each employee covered by the plan. In the context of "unrelated trade or business," Rev. Pul. 66-151 held that the management of health and welfare plans, including the performance of services connected therewith, constituted an activity that was not substantially related to the purposes for which exemption is granted under section 501(c)(6).

Like the organization held taxable in Rev. Pul. 66-151 and unlike the organization held tax exempt in Rev. Pul. 65-164, your organization performs necessary services at reduced cost that constitute a convenience and economy for their employer members.

The services you provide (pension administrative services) are business services of the kind ordinarily carried on for profit. Each member pays for these services in proportion to the number of their plan participants.

The services performed by this organization is readily available in the market-place through commercial entities.

Income tax regulation section 1.501(c)(6)-1 holds that the performance of business services of the kind ordinarily carried on for profit will preclude exemption under section 501(c)(6) even if it is conducted on a cooperative basis.

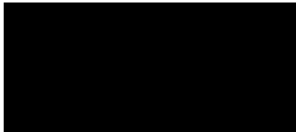
Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(6) of the Code or any other section and propose to deny your request for exemption.

Sincerely yours,

A solid black rectangular box redacting the signature of the District Director.

District Director

cc:

A solid black rectangular box redacting the list of recipients for the carbon copy (cc).